



**EFFECTIVE DATE: July 8, 2014**

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**LATEST REVISION: N/A**

**SUBJECT: Confidentiality of Department Information and Records**

**I. PURPOSE**

- A. To ensure the protection of confidential client information maintained by the Department, and to state the conditions by statute and regulation by which confidential information may or shall be disclosed.
- B. To provide instruction for the proper development, collection, and retention of confidential client information.
- C. To safeguard the Department's personnel records from unauthorized disclosure.

**II. SCOPE**

This Order has Department-wide applicability. Confidentiality provisions are binding on all Department employees as well as volunteers, interns, and individuals under the authority of the Department.

**III. AUTHORITY**

- N.J.S.A. 9:6-8.40
- N.J.S.A. 9:6-8.10a
- N.J.S.A. 52:13D-25
- N.J.S.A. 47:4-1 et seq.
- N.J.S.A. 47:1A-10
- N.J.S.A. 30:4-24.3
- N.J.S.A. 30:14-1 et seq.
- N.J.S.A. 2A:4A-60
- N.J.S.A. 26:5C et seq.
- N.J.A.C. 10:41-1.1 et seq.
- N.J.A.C. 10:133G-1.1 et seq.
- 45 C.F.R. 160, 164
- 42 U.S.C. 670 et seq.
- 42 U.S.C. 5101 et seq.
- 42 U.S.C. 1301 et seq.
- 42 C.F.R. 2.1 et seq.
- 20 U.S.C. 1232(g)
- 112 P.L. 278 (Uninterrupted Scholars Act)

**IV. DEFINITIONS**

The following terms, when used in this Order, have the meanings indicated:

"Client" means any individual, whether child or adult, including resource parents and adoptive parents, involved with or receiving services from the Department.

"Confidential Information" means any information or a portion of the information that is protected by statute, regulation, policy, executive order, or administrative order, and generally prohibited from being disclosed to the public.

“Consent” means permission given in writing by a client, his/her attorney, or authorized representative to disclose specified information within a limited time period to specifically identified individuals.

“Disclosure” means the release, transfer, access to, or divulging, in any manner, of information.

“Electronic Recording” means any recording made for replaying of audio or visual information.

“Eligible Student” means a student who has reached the age of 18 or attends school beyond the high school level.

## **V. POLICY**

### **A. Confidential Client Information Generally**

Confidentiality is an essential element in the relationship between the clients we serve and the agencies within this Department. However, there are circumstances in which confidentiality yields to what is in the best interest of the individual, the needs of the Department, or the rights of third parties. The Department strives to balance these competing interests to ensure that all parties' rights are properly protected.

In order to provide the best possible care and services to our clients, the Department regularly obtains personal, economic, and psycho-social information. Pursuant to State and federal law, the Department treats all oral, written, and recorded client information as confidential. Additionally, the protection of confidentiality extends to individuals and entities with whom the Department lawfully shares information.

Confidential client information may be disclosed only as permitted by law, and after formal request procedures and Department approvals have been obtained. Where client consent is necessary or appropriate, Department employees shall use set forms as outlined in their respective policies. Confidential information shall not be released if it compromises the safety of any person, the integrity of a Department investigation, a criminal or civil investigation, or a judicial proceeding. Sharing of confidential information between Department employees is permitted only to the extent necessary to carry out job-related functions.

### **B. Child Abuse and Neglect Information**

#### **1. Child Protective and Welfare Service Information**

All information and records involving child protection and child welfare shall be kept confidential pursuant to N.J.S.A. 9:6-8.10a.

Governmental entities, service providers, and individuals may request certain child protection information. Requests for such information shall be put in writing. The request shall state the requester's statutory authority permitting disclosure, the specific information sought, the purpose for which the information will be used, and a statement indicating that the individual or entity will keep the information confidential.

Only pertinent information shall be released to the requester to satisfy his or her purpose. Additionally, no individual or agency shall have general access to the Department's records, except if provided by statute or court rule.

If you receive a request for information and are unsure if information should be disclosed, you should contact the Office of Legal Affairs within the Department.

## **2. Disclosure to Present and Former Division of Child Protection and Permanency (CP&P) Clients**

No current or former client shall have unrestricted review of the Division of Child Protection and Permanency (DCP&P) records or general access to the information. However, each client is entitled to know what information is being collected, how it will be used, and who has access to the information. A client currently or formerly receiving services may inspect or copy his or her own records as they relate to financial eligibility for or receipt of benefits, assistance, or services. For other information, any disclosure shall be limited to the extent that the client makes a reasonable demonstration of the need to know.

## **3. Child Fatality and Near Fatality**

The Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. 5101 et seq., requires that states disclose to the public findings or information about cases of child abuse and neglect that result in fatalities or near fatalities.

The information that may be disclosed includes: the cause and circumstances regarding the fatality or near fatality; the age and gender of the child; information describing any previous reports or child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality; the result of any such investigations; and the services provided by and actions of the Department on behalf of the child that are pertinent to the child abuse or neglect that preceded the fatality or near fatality.

The Department may release information to the public regarding a child fatality or near fatality both before and after a formal investigation by the agency has been completed. However, nothing shall be disclosed that would likely endanger the life, safety, or physical or emotional well-being of any person or compromise the integrity of an ongoing investigation or judicial proceeding.

Release of child fatality and near fatality information shall only be by the Department's Office of Communications and Public Affairs. No other Department employee shall disclose information pertaining to a child fatality.

#### **4. Title IV-E, IV-B Provisions**

Title IV-E and IV-B, 42 U.S.C. 1301 et seq., require safeguards restricting the use and/or disclosure of information regarding the children served by the Department pursuant to Title IV-E and IV-B foster care. All of the Department's records maintained under Title IV-E and IV-B are to be safeguarded against unauthorized disclosure, pursuant to N.J.S.A. 9:6-8.10(a). Disclosure of any confidential client information shall be limited to the provisions permitting it under N.J.S.A. 9:6-8.10(a)(b).

Where Department confidential information is subject to the competing confidentiality requirements under CAPTA and Title IV-E and IV-B, the CAPTA provisions that mandate disclosure shall supersede the confidentiality provisions of Title IV-E and IV-B. Conversely, when CAPTA provisions merely permit disclosure but do not require it, confidential information held by the Department shall remain protected. See Department of Health and Human Services, Children's Bureau, Child Welfare Policy Manual § 2.1A.4.

### **C. Health Records**

#### **1. Health Insurance Portability and Accountability Act of 1996 (HIPAA)**

The Department is required to comply with HIPAA, 42 U.S.C. 1301 et. seq., and its privacy regulations. Maintaining the privacy of client health information is mandatory for all employees. The Department must provide the client with notice as to our legal obligations and privacy practices about all health information collected.

The general privacy rule is that the Department will not disclose client health information without written authorization from the client, parent, or legal guardian. See CP&P Form 11-90, Health Insurance Portability and Accountability Act "HIPAA" Authorization to Disclose Information Form. However, there are instances where disclosure of health information is permitted without written authority. Examples of this include, but are not limited to, disclosure for purposes

of treatment or payment for services, and disclosure to family involved in the minor client's care. The client has the right to inspect and copy his or her health information and request, in writing, that his or her information not be disclosed for a particular reason.

Protected health information excludes individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g.

HIPAA specifically exempts health information contained in employee records. As such, health information contained in employee records must be safeguarded according to applicable employment laws and not per HIPAA.

All divisions within the Department must have appropriate administrative, technical, and physical safeguards in place to protect confidential health information. Access to such information shall be limited to only employees that require it to carry out their official duties.

All questions surrounding HIPAA and its applicability shall be directed to the Department's Privacy Officer.

## **2. Disclosure of Human Immunodeficiency Virus (HIV), AIDS Information**

The Department shall not release information about a client's HIV or AIDS status except as permitted by N.J.S.A. 26:5C et seq. Disclosure is permitted with written consent of the client or the legal custodian of a child, or with a court order authorizing the release. Additionally, the recipient of the information must have legal authority to receive it.

Disclosure is also permitted without written consent in certain circumstances. When the Department makes a placement of a child into a resource home, treatment home, or residential facility, the Department may release HIV/AIDS status of the child to the prospective caretaker or staff directly involved with providing care to the child. Additional circumstances permitting disclosure without written consent include diagnosis and treatment purposes, financial audits, and scientific research.

Any questions regarding whether to disclose HIV/AIDS information should be directed to the Department's Office of Legal Affairs.

## **3. Substance Abuse Patient Records**

Records and information held by the Department pertaining to a client's participation in a program that provides alcohol or drug abuse diagnosis,

treatment, or treatment referral services shall be kept confidential pursuant to 42 C.F.R. 2.1 et seq. Disclosure of such information is prohibited unless the client signs a consent that meets the requirements of 42 C.F.R. 2.31(a) or unless one of the limited exceptions identified in the regulation applies. If the client applying for or participating in a substance abuse program is a minor, the minor's consent is required for disclosure of protected information, even to the minor's parent or guardian. 42 C.F.R. 2.14.

The following are exceptions to the general prohibition against disclosure of protected information absent a valid consent: disclosures to staff within the program when needed for the provision of substance abuse diagnosis or treatment; disclosures to "qualified service organizations" that provide services to the program; disclosures to law enforcement to report a crime on the program premises or against program staff; disclosures to comply with State law requiring the reporting of child abuse and neglect; disclosures to medical personnel needed to address a medical emergency; disclosures for the purpose of research; disclosures for the purposes of audits or evaluations; and disclosures pursuant to a court order. Any disclosure must be limited to the information necessary to carry out the purpose of the disclosure.

#### **D. Educational Records – Office of Education**

The Office of Education's (OOE) creation and collection of educational records are governed by FERPA. This federal law protects the privacy of student education records. Under FERPA, OOE's schools must have written permission from the parent or eligible student in order to release any information from a student's education record, unless a specified exception exists.

OOE's educational records may be disclosed, without consent, under certain specific circumstances including, but not limited to, health and safety emergencies, student transfers, financial aid, and by court order or State law. Additionally, directory information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance may be released without consent. However, parents and eligible students must be notified about directory information and allowed a reasonable amount of time to request that such information not be disclosed.

Parents or eligible students have the right to inspect, review, and request corrections of a student's education records maintained by OOE. Additional information on policy surrounding educational records can be found within OOE's Policy #4, "Student Records and Confidentiality."

Under the Uninterrupted Scholars Act, effective January 14, 2013, OOE records may be released to an agency caseworker if the agency has the right to access

the student's case plan and is legally responsible for the child's care and protection. 112 P.L. 278.

Any questions surrounding the creation and collection of educational records should be directed to the Department's Office of Legal Affairs.

#### **E. Records of Children and Young Adults with Developmental Disabilities and/or Mental Illness**

The Department is committed to protecting the confidentiality of the records of individuals in its care, in accordance with N.J.S.A. 30:4-24.3. Therefore, all client records, including certificates, applications, records, and reports that identify an individual receiving services from the Department related to a developmental disability or mental illness, shall be kept confidential. Confidentiality shall also extend to all applications for services of persons determined ineligible for services and those applications that are initiated but not completed.

Disclosure of confidential information is permitted by N.J.S.A. 30:4-24.3 under certain conditions, including, but not limited to, court orders if necessary to the proceedings, disclosure to a friend, relative, physician caring for the patient's current medical condition, or attorney if for the benefit of the patient, or for conducting an investigation into the financial ability to pay of any person receiving services.

N.J.A.C. 10:41-1.1 et seq. provides guidance specific to records relating to services for persons with developmental disabilities within the Children's System of Care (CSOC). Under these provisions, a request for release of confidential client records shall be made in writing, and identify the specific information requested as well as the intended uses for the information. Any request for release of records shall also be accompanied by a valid written consent from the individual or his or her respective legal guardian.

#### **F. Domestic Violence Information**

The Department recognizes the importance of assisting victims of domestic violence who have relocated in their effort to keep batterers from finding them. Information that may reveal the identity or location of a person seeking shelter services shall not be disclosed, pursuant to N.J.S.A. 30:14-1 et seq., except as required by law or with consent of the client seeking shelter services. Additionally, the location of a shelter in which a client is currently residing shall be kept confidential.

In accordance with the Address Confidentiality Program Act, N.J.S.A. 47:4-1 et seq., the Department shall accept a program participant's use of a substitute

mailing address and, when required, respond to a request for client records without disclosing the location of a victim of domestic violence.

## **G. Juvenile Justice Information**

Social, medical, psychological, legal, and other records of juveniles charged as delinquent or found to be part of a juvenile-family crisis that the Department is providing care or servicing shall be kept confidential and are not subject to public inspection, pursuant to N.J.S.A. 2A:4A-60. Juvenile justice information may be disclosed to a parent or guardian, the attorney for the juvenile, institutions providing placement for the juvenile, law enforcement, Court Appointed Special Advocates (CASA), and other persons or agencies by order of the court.

## **H. Collection and Retention of Records**

### **1. General Provisions**

Collection and retention of information within the Department must be consistent with federal and State law. The obligation of safeguarding all confidential client information held by the Department rests with its entire staff.

The Department shall retain its confidential records in a manner that appropriately secures them from unauthorized access and/or removal. This includes protection for paper records and files as well as electronic databases of information. Under circumstances where physical records must be temporarily removed from an office, the staff member shall be responsible for their return as soon as the record is no longer required.

Confidential client records that are set to be expunged or destroyed shall be permanently destroyed from electronic databases or shredded and considered unreadable.

### **2. Electronic Recording**

Electronic recording by the Department of work-related activities, conversations, or discussions between Department employees and/or clients is prohibited.

Electronic recording of a meeting, conversation, or discussion is permitted only where official minutes are required by law, at the request of the Commissioner of the Department of Children and Families or his/her designee, or as a reasonable accommodation under the Americans with Disabilities Act (ADA) in determination with the ADA Unit. The electronic recording shall provide evidence of oral



notification of and verification by all those in attendance that the meeting is being electronically recorded.

This Order does not prohibit the Department's right to make recordings of all calls to the State Central Registry, or for documentation of administrative hearings. Furthermore, this Order shall not restrict the Department's practice of making or using recordings in approved training modules for staff and, as necessary, for public relations.

#### **I. Conflicts of Interest - Ethics**

As set forth in N.J.S.A. 52:13D-25, no Department employee shall willfully disclose to any person, regardless of whether for pecuniary gain, any information not available to members of the public that is acquired in the course of one's duties. Furthermore, Department employees are not to use for the purpose of pecuniary gain, whether directly or indirectly, any information not available to the public that is acquired in the course of one's duties or by reason of his official duties.

#### **J. Personnel Information**

Department employee personnel records shall not be made available for public access, as set forth in N.J.S.A. 47:1A-10. However, the individual's title, position, salary, payroll record, length of service, date and reason for separation, and the amount and type of any pension received shall be eligible for disclosure.

Department employees shall direct all requests for information contained within their respective personnel file to the Director of Human Resources.

### **VI. RESPONSIBILITY AND PROCEDURES**

Each division within this Department is permitted to establish policy in furtherance of the general principles set forth in this Administrative Order and pursuant to and in conformity with federal and State laws and regulations.

It is the responsibility of each Division and Office to strictly enforce all applicable confidentiality laws that apply to their respective practices. Divisions and Offices must ensure that appropriate safeguards and procedures are in place that govern how and when confidential information is disclosed. If there are questions about whether information is confidential, personnel in the Department shall proceed cautiously and consult with the Office of Legal Affairs for guidance.

Department employees found to have violated confidentiality statutes may be subject to disciplinary action up to and including termination and/or criminal action.

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Allison Blake, PH.D., L.S.W.  
Commissioner

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